

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

<b>In the Matter of</b>	)	
<b>Federal Preemption of</b>	)	<b>WT 02-100</b>
<b>Anne Arundel County Ordinance</b>	)	<b>DA 02-1044</b>
<b>Regulating Radio Frequency Interference</b>	)	

**To:   Wireless Telecommunications Bureau  
      Commercial Wireless Division  
      Policy and Rules Branch**

**COMMENTS OF PINNACLE TOWERS INC.**  
**IN SUPPORT OF PETITION FOR DECLARATORY RULING**

Pinnacle Towers Inc. ("Pinnacle"), by its attorneys, hereby files Comments in support of the Petition for Declaratory Ruling filed by Cingular Wireless LLC ("Cingular") in the above-captioned proceeding. In support of its Comments, Pinnacle states as follows:

Pinnacle is a major provider of communication site rental space in the United States and Canada. As of December 31, 2001, Pinnacle owned, managed, leased, or had rights to more than 4,000 sites. Six of those sites are located in Anne Arundel County, Maryland.

Pinnacle agrees with Cingular that Congress, the Federal Communications Commission ("FCC" or "Commission") and the courts have determined conclusively that the regulation of radio frequency interference ("RFI") is within the exclusive jurisdiction of the FCC.<sup>1</sup> Pinnacle also agrees that Anne Arundel's zoning ordinance ("Ordinance") is an improper attempt to regulate RFI contrary to the FCC's exclusive jurisdiction,<sup>2</sup> and that such regulation by the

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<sup>1</sup> Cingular Petition at 3-8.

<sup>2</sup> See Cingular Petition at 7-8.

County is unnecessary in light of existing FCC regulation.<sup>3</sup> In addition to being inconsistent with federal law, however, the Ordinance contains extremely burdensome engineering requirements that are completely unworkable, will substantially impede the development of telecommunications services, and will allow the county to deny zoning permits based on inappropriate criteria.

Vast numbers of RFI engineering studies are required by the Ordinance in an ill-advised attempt to ensure that radio frequencies do not interfere with the County's public safety communication system. Such studies must be conducted: (i) by the tower owner whenever a tower is first constructed;<sup>4</sup> (ii) by both the tower owner and the user of equipment on the tower whenever any equipment is placed on the tower;<sup>5</sup> and (iii) by both the tower owner and the user of equipment on the tower whenever any physical or technical change is made to the tower or to the equipment placed on the tower.<sup>6</sup> An independent consultant must perform these studies,<sup>7</sup> and if any interference exists, the zoning permit may be revoked.<sup>8</sup> In addition to RFI studies, a radio frequency radiation ("RFR") study must be conducted within 30 days after a zoning permit is issued and at least once per year thereafter, which confirms that the equipment on the tower conforms with the FCC's RF emissions standards.<sup>9</sup> The RFR studies must be performed by an engineer acceptable to the County.<sup>10</sup>

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<sup>3</sup> *Id.* at 6.

<sup>4</sup> Ordinance, Article 28, §10-125(j)(1).

<sup>5</sup> *See id.* and §§ 1-128(a), (c).

<sup>6</sup> *Id.*

<sup>7</sup> Ordinance, Article 28, §10-125(j)(1).

<sup>8</sup> *Id.* at §10-125(j)(2).

<sup>9</sup> Ordinance, Article 28, §10-125(k)(1).

<sup>10</sup> *Id.*

These mandatory RFI and RFR studies are extremely costly. A consultant would charge between \$5,000 - \$10,000 for each RFI study and another \$5,000 for each RFR study. Even if limited to instances when new equipment is placed on Pinnacle's towers and to once per year, such costs would be prohibitive. Pinnacle would need to pass through these expenses to its telecommunications company tenants, and the costs to these companies serving nearby communities would increase dramatically.

The mandatory studies are not, however, limited to once per year and when new equipment is added. Instead, an RFI study is required by both tower owners and the user of any equipment whenever equipment is "altered", which includes "any change in configuration, transmit frequency, or power level."<sup>11</sup> This requirement is entirely unworkable. The telecom equipment located on Pinnacle's towers operates dynamically, so that changes in modulation rates, changes in bandwidth, changes in power levels and changes in frequencies occur on a minute-by-minute basis. To require an RFI study every minute that one of these changes occurs is preposterous.

Requiring these studies to be conducted not only by the users of the equipment but also by tower owners like Pinnacle makes no sense either. Tower owners possess no control over the RF emissions of their tenants, nor should they possess such control. The regulation of RF emissions is vested exclusively with the FCC. In addition, tower owners have entered into written leases with their telecommunications company tenants and are subject to lawsuits if those leases are terminated for illegitimate reasons, which would include a finding by the tower owner that excessive RF interference exists. Tower owners are therefore powerless to prevent their tenants from interfering with the County's public safety system, and it is inappropriate and unreasonable to hold them accountable for such violations.

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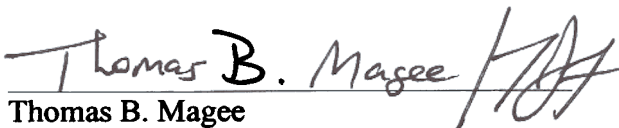
<sup>11</sup> Ordinance, Article 28, §1-128(a).

It is improper to vest the County with power to revoke Pinnacle's zoning permit for reasons other than land use concerns, and especially for reasons that are within the exclusive jurisdiction of the FCC. The County's RF non-interference mandates, and its onerous requirements for engineering studies, make it very easy for the County to dispose of unsightly or otherwise unwanted towers. As the Ordinance is currently written, a tower's zoning permit might be revoked for RF reasons even if the tower owner complies with all appropriate land use regulations and even if the tower is necessary to serve the telecommunications needs of surrounding communities.

The enormous cost of complying with the Ordinance and the ease with which the County could dispose of communications towers for non-land use reasons create unnecessary and unreasonable obstacles to the development of telecommunications services in Anne Arundel County. As such, the Ordinance is inconsistent with Congress's intent to provide advanced telecommunications services to all Americans and with the preemption rulings of the FCC and the courts. Pinnacle therefore respectfully requests the Commission to preempt Anne Arundel's Ordinance to the extent requested in Cingular's Petition.

Respectfully submitted,

**PINNACLE TOWERS INC.**

By:   
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Keller and Heckman, LLP  
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Washington, D.C. 20001  
(202) 434-4100  
Attorney for  
**Pinnacle Towers Inc.**

Dated: June 7, 2002

# DECLARATION OF MICHAEL P. MILLARD

Michael P. Millard, do hereby state as follows:

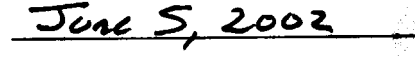
- 1 I am Vice President of Engineering and Operations for Pinnacle Towers Inc. ("Pinnacle").
2. I have read the foregoing "Comments of Pinnacle Towers Inc. in Support of Petition for Declaratory Ruling."
3. The mandatory radio frequency interference ("RFI") and radio frequency radiation ("RFR") studies required by Anne Arundel County's zoning ordinance are extremely costly. I estimate that a consultant would charge between \$5,000 - \$10,000 for each RFI study and another \$5,000 for each RFR study.
4. The telecom equipment located on Pinnacle's towers operates dynamically, so that changes in modulation rates, changes in bandwidth, changes in power levels and changes in frequencies may occur on a minute-by-minute basis.
5. Pinnacle's lease contracts with its telecommunications tenants do not allow Pinnacle to terminate the contract because of radio frequency interference to radio users or excessive RF emissions at locations it does not control.
6. Pinnacle's lease contracts with its tenants mandate compliance with all FCC Rules and Regulations, which include those Rules pertaining to non-ionizing radio-frequency radiation safety and adopted in the Commission's *Second Memorandum Opinion and Order and Notice of Proposed Rule Making*, ET Docket 93-62, August 25, 1997.
7. Pinnacle Towers has never received a request by Anne Arundel County to locate, identify or mitigate radio interference to public safety. Pinnacle Towers is unaware of any prior or current public safety radio interference situations involving its towers or its tenants in Anne Arundel County, Maryland.
8. Pinnacle Towers maintains a fully-staffed and properly equipped engineering department trained to locate, identify and mitigate radio interference to all licensed and unlicensed radio services, including public safety systems. Pinnacle Towers is aware that many of its tenants on its towers in Anne Arundel County, Maryland possess similar engineering capabilities.

9. All of the other statements contained in the Comments are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.



Michael P. Millard



Date

**CERTIFICATE OF SERVICE**

I, Cassandra L. Hall, do hereby certify that copies of the foregoing pleading were sent, via first class mail, postage pre-paid, this 7<sup>th</sup> day of June, 2002, to the following:

Qualex International\*  
([qualexint@aol.com](mailto:qualexint@aol.com))

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Cassandra L. Hall

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\*Via E-Mail